

Policies and Procedures

Subject: Uses and Disclosures of Protected Health Information (PHI)

Policy Number: HIPAA 4.1

Effective Date: 5/15/04

Entity Responsible: Division of General Counsel

Revision Date: 1/11/18

1. Purpose:

To provide instructions and guidance regarding the uses and disclosure of protected health information (PHI) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and other federal laws, and Tennessee state law.

2. Policy:

- 2.1: It is the policy of the Tennessee Department of Mental Health and Substance (TDMHSAS) or the Regional Mental Health Institutions (RMHIs) not to use or disclose PHI except as permitted or required by HIPAA regulations, and other federal and state laws relating to privacy.
- 2.2: All requests for the use or disclosure of PHI must be in writing.
- 2.3: Prior to disclosing PHI, the TDMHSAS and the RMHI must verify the identity and authority of the individual or agency representative making the request for use or disclosure of PHI. *See* TDMHSAS HIPAA Policy 4.10, and T.C.A. § 33-3-104.
- 2.4: When disclosing PHI or requesting PHI, TDMHSAS and the RMHI must comply with the minimum necessary standard in all uses, disclosures, or requests of PHI. *See* TDMHSAS HIPAA Policy 4.2.
- 2.5: The TDMHSAS and/or RMHI may disclose PHI upon receipt of a valid, completed authorization to release information. A valid authorization includes the following:
 - 2.5.1: A description of the specific information to be used or disclosed;

- 2.5.2: The name or other specific identification of person(s) or class of persons authorized to make the requested use or disclosure;
 - 2.5.3: The name or other specific identification of person(s) or class of persons or agency to whom the information is to be disclosed;
 - 2.5.4: A description of the purpose for each requested use and disclosure. The statement “at the request of the” is sufficient when a service recipient, or his or her representative, initiates the authorization and does not, or elects not, to provide a statement of the purpose;
 - 2.5.5: An expiration date or an expiration event that relates to the individual or to the purpose of the use or disclosure. The statement “none” or similar language is appropriate if authorization is for use or disclosure of PHI for research;
 - 2.5.6: Signature of the service recipient and date signed. If authorization is signed by service recipient’s parents, guardian, conservator, or legal representative, a description of that person’s authority to act for service recipient and documentary evidence of the individual’s authority to act on behalf of the service recipient must be provided;
 - 2.5.7: Notice to the service recipient that he or she has the right to revoke the authorization in writing at any time;
 - 2.5.8: Information that the service recipient is not required to sign the authorization, that the treatment, payment, enrollment, or eligibility for service or benefits is not conditioned on the service recipient’s execution of the authorization;
 - 2.5.9: Notice that the PHI disclosed pursuant to the authorization may be subject to re-disclosure and thus will no longer be protected by HIPAA;
 - 2.5.10: If the TDMHSAS or RMHI is seeking authorization from the service recipient to use or disclose PHI, a copy of the signed authorization must be provided to the service recipient.
- 2.6: The TDMHSAS must receive a separate, written authorization for release, from the service recipient, former service recipient, or legal representative of the service recipient prior to using or disclosing psychotherapy notes or PHI for marketing purposes.
 - 2.6: The TDMHSAS or the RMHIs may use or disclose PHI without a service recipient’s authorization to the service recipient about whom the information relates.

- 2.7: In any instances where the TDMHSAS or the RMHI may use or disclosure PHI without a valid authorization, if the information is protected under Title 33 of the T.C.A or 42 CFR Part 2, as well as HIPAA, PHI will only be disclosed subject to the requirements of those statutes. Where HIPAA permits disclosure of PHI, but state law, such as Title 33, provides stricter privacy protections, Title 33 preempts HIPAA and is the controlling law.
- 2.8: The TDMHSAS or the RMHIs may use or disclose PHI without a service recipient's authorization for the treatment, payment, or health care operations, as permitted by §45 CFR 164.506, under the following circumstances:
- 2.8.1: for the TDMHSAS or the RMHIs own treatment, payment, or health care operations;
 - 2.8.2: for the treatment activities or a health care provider;
 - 2.8.3: to another covered entity or health care provider for the payment activities of the entity that receives that information;
 - 2.8.4: The TDMHSAS or the RMHI may disclose PHI without a valid authorization to another covered entity or health care provider for health care operations activities of the entity that receives the information, if TDMHSAS or the RMHI and the other covered entity either has or had a relationship with the individual who is the subject of the PHI being requested, the PHI pertains to such relationship, and the disclosure is for:
 - 2.8.4.1: Conducting a quality assessment and improvement activities, including outcome evaluations and development of clinical guidelines, provided that obtaining generalizable knowledge is not the primary purpose of any studies resulting from such activities; or
 - 2.8.4.2: Reducing health care costs, protocol development, care management and coordination, communicating with health care providers and patients with information about treatment alternatives; or
 - 2.8.4.3: Health care fraud and abuse detection or compliance.
- 2.9: The TDMHSAS or the RMHI may use or disclose PHI to individual's designated by a service recipient. A service recipient shall be given an opportunity to sign an information release that authorizes TDMHSAS or the RMHI to release certain information concerning the recipient to family members or other designated persons.
- 2.9.1: This opportunity shall be offered when the recipient is entering an inpatient or an outpatient treatment facility, admitted in an emergency room, entering

in a crisis response setting, or admitted in ongoing treatment with a community mental health provider. This opportunity shall be offered to the recipient at the time of admission, and periodically during treatment, and at discharge.

- 2.9.2: The service recipient may withdraw authority to release information previously authorized, withdraw authority to release the information to any individual's previously authorized. These changes must be executed in writing by the service recipient or other individual's with the legal authority to do so under T.C.A. § 33-3-109.
- 2.9.3: The TDMHSAS or the RMHI may otherwise disclose general information as to a residential service recipient's overall medical condition without clinical details and such information is sought by service recipient's family members, relatives, conservator, legal guardian, legal custodial, guardian ad litem, foster parents or friends, pursuant to T.C.A. § 33-3-105 and 45 CFR §164.510.
- 2.10: The TDMHSAS and the RMHI may use or disclose PHI without a valid authorization for uses and disclosures related to public health activities including pursuant to 45 CFR § 164.512(b):
 - 2.10.1: To another public health authority authorized by law to collect or receive such information for purpose of preventing or controlling disease, injury, or disability; or
 - 2.10.2: To a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect. *See* TDMHSAS HIPAA Policy 4.4.
- 2.11: The TDMHSAS and the RMHI may disclose PHI without a valid authorization about victims of abuse, neglect, or domestic violence pursuant to 45 CFR 164.512(c). *See* TDMHSAS HIPAA Policy 4.4.
- 2.12: The TDMHSAS and the RMHI may use or disclose PHI without a valid authorization for health oversight activities to a health oversight agency for oversight activities authorized by law including audits, civil, administrative, or criminal investigations; inspections, licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of the following areas pursuant to 45 CFR 164.512(d):
 - 2.12.1: The health care system;
 - 2.12.2: Government benefits programs for which health information is relevant to beneficiary eligibility;

- 2.12.3: Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or
- 2.12.4: Entities subject to civil rights laws for which health information is necessary to determine compliance.
- 2.12.5: A health oversight activity covered under this section does not apply to investigations of an individual that is not directly related to the receipt of health care; a claim for public benefits related to health; or qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for benefits.
- 2.13: The TDMHSAS and/ or RMHI may disclose PHI without a valid authorization in the course of any judicial or administrative proceeding in the below circumstances pursuant to 45 CFR 164.512(e), and T.C.A. § 33-3-105.
 - 2.13.1: A court orders the disclosure after a hearing, and has determined that disclosure is necessary to conduct proceedings before the court, and that failing to make the disclosure would be contrary to public interest or detrimental to a party to the proceedings; and
 - 2.13.2: The party requesting the PHI provides a written statement to the court and accompanying documentation that demonstrates:
 - 2.13.2.1: The parties to the legal action have agreed to a qualified protective order and have presented it to the court; or
 - 2.13.2.2: The party seeking the PHI has requested a qualified protective order from the court.
 - 2.13.2.3: The TDMHSAS must make reasonable efforts to limit the PHI used or disclosed to the minimum necessary to respond to the court order.
- 2.14: The TDMHSAS and the RMHI may disclose PHI without a valid authorization to law enforcement where a felonious act of bodily harm or sexual offense appears to have been committed on the premise of a facility whose records are confidential. Such information that may be provided to the appropriate law enforcement agency includes (1) the name of, and providing access to, witnesses or potential witnesses of the offense, (2) the name of, and providing access to, suspects or potential suspects of the offense, and (3) the scene of, and providing access to, where the offense occurred, pursuant to 45 CFR § 164.512(g) and T.C.A. §33-3-110.
- 2.15: The TDMHSAS and the RMHI may disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or

other duties authorized by law, as well as disclose PHI to funeral directors as necessary to carry out their duties with respect to the decedent pursuant to 45 CFR §164.512(g), and pursuant to T.C.A. § 33-3-105.

- 2.16: The TDMHSAS or the RMHI may disclose PHI for research purposes under the conditions and circumstances listed 45 CFR § 164.512(i)
- 2.17: The TDMHSAS or the RMHI may use or disclose PHI to avert a serious threat to health or safety if the TDMHSAS or the RMHI believes in good faith that the use or disclosure is necessary pursuant to 45 CFR §164.512(j), T.C.A. § 33-3-206, and T.C.A. §33-3-210:
 - 2.17.1: to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and is reasonably able to prevent or lessen the threat, including target of the threat; or
 - 2.17.2: is necessary for law enforcement authorities to identify or apprehend an individual because of a statement by an individual admitting participation in a violent crime that TDMHSAS or the RMHI reasonably believes may have caused serious harm to the victim; or where it appears necessary from all the circumstances that the individual has escaped a correctional institution or lawful custody.
- 2.18: The TDMHSAS or the RMHI may disclose PHI for specialized government functions listed at 45 CFR §164.512(k) including instances where PHI may be disclosed to authorized Federal officials for the provision of protective services to the President or other persons authorized or to a correctional institution about an inmate under certain situation.
- 2.19: The TDMHSAS or the RMHI may disclose PHI as authorized and by the extent necessary to comply with worker's compensation laws or other similar programs, established by law, that provide benefits to work-related injuries or illness without regard to fault pursuant to 45 CFR 164.512(l).
- 2.20: When the TDMHSAS is a participant in an organized health care arrangement (OHCA), PHI about a service recipient may be disclosed without authorization to another covered entity that participates in the OHCA, for any health care activities of the OHCA.
- 2.21: The TDMHSAS and the RMHI is required to disclose PHI to:
 - 2.21.1: The service recipient, a former service recipient, a service recipient's legal representative when a request has been made to inspect or obtain a copy of the medical record, or for an accounting of disclosures of PHI, limited to certain exceptions. *See* TDMHSAS HIPAA policies 4.7 and 4.8.

- 2.21.2: The Secretary of the U.S. Department of Health and Human Services, when investigating complaints or determining the TDMHSAS' compliance with HIPAA.

3. Procedure and Responsibility:

- 3.1: All requests for disclosure of PHI from the TDMHSAS or RMHIs should be directed to the TDMHSAS Privacy Officer or the applicable RMHI Privacy Officer respectively.
- 3.2: Before disclosing PHI, the TDMHSAS Privacy Officer or the RMHI Privacy Officer must determine whether an authorization is required to release the information.
- 3.3: If an authorization for the use or disclosure of the PHI is required, the TDMHSAS or RMHI Privacy Officer must confirm that a valid, written authorization has been received by the TDMHSAS or RMHI from the service recipient, parent(s) of a minor child, or the service recipient's legal representative. Such authorization must meet the requirements of 2.5. The uses or disclosure of the PHI must strictly conform to the authorization. If a valid authorization is necessary, but has not been received, the PHI must not be used or disclosed.
- 3.4: If the TDMHSASA Privacy Officer or the RMHI Privacy Officer determines that PHI should be released, the TDMHSAS or RMHI Privacy Officer must ensure that the requested PHI is released within thirty (30) business days from the date of request. If the PHI release is not appropriate, the TDMHSAS Privacy Officer or the RMHI Privacy Officer must notify the requesting party within thirty (30) business days from the date of request.
- 3.5: The Chief Executive Officer at each RMHI must ensure that when PHI from their facility is disclosed or released for use, all required documentation is maintained in written or electronic form for not less than ten (10) years after the termination of the service recipient's treatment or for not less than ten (10) years after the service recipient turned eighteen (18), whichever is longer.
- 3.6: The TDMHSAS or the RMHI Privacy officer/ designee who disclose PHI must document all disclosures, absent a valid authorization, on a disclosure log kept in the service recipient's record. A copy of the written request for disclosure must also be placed in the service recipient's record. Disclosures of PHI may also be entered into an electronic log. This disclosure log should be kept for a minimum of six (6) years from the date the request for disclosure was received and this disclosure log shall be placed in the service recipient's file.
- 3.6.1: The disclosure log must include (1) date of the disclosure, (2) name of the individual of entity who received the PHI, and if known, their address, (3) a

brief description of PHI disclosed, and (4) a brief statement of the purpose of the disclosure that reasonably describes the basis of the disclosure.

- 3.7: The TDMHSAS or RMHI Privacy Officer may provide the service recipient, former service recipient, or service recipient's legal representative with the TDMSAS Authorization to Release Confidential Information form, which can be found at: <http://www.tn.gov/behavioral-health/topic/legal-forms>.
- 3.8: If the TDMHSAS or RMHI is seeking authorization from the service recipient to use or disclose PHI, a copy of the signed authorization must be provided to the service recipient.

4. Other Considerations

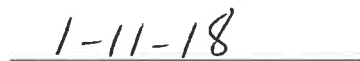
- 4.1: Authority:

45 CFR §§164.502, 164.506, 164.508, 164.512, 164.514; T.C.A. §§ 33-3-103 through 33-3-112.

Approved:



Commissioner



Date